



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Riverside Research Institute

File: B-234844

Date: March 31, 1989

DIGEST

1. Protest of alleged solicitation impropriety is dismissed as untimely where filed after award.
2. Alleged oral complaints made to contracting activity before date for receipt of proposals are insufficient to constitute agency-level protest and are therefore irrelevant to the General Accounting Office's determination of timeliness.

DECISION

Riverside Research Institute protests the award of a contract to BDM Corporation for Task Order No. 39 under request for proposals (RFP) No. SDIO84-88-R-0004, issued by the Strategic Defense Initiative Organization (SDIO) for scientific, engineering and technical support. Riverside contends that the solicitation improperly required offerors to use a specific firm, ARDAK, as a subcontractor for the performance of Task Order No. 39. We dismiss the protest.

According to Riverside, it along with two other contractors, BDM Corporation and Analytic Sciences Corporation, had been awarded umbrella requirements contracts which provided that the three contractors would compete, on a task-by-task basis, for the award of future tasks required by the SDIO. In competing for this requirements contract each offeror had been required to put together a team of subcontractors who would be able to assist in the subsequently issued task orders. ARDAK was one such subcontractor of Riverside's, and according to the protester it was ARDAK's prior experience and special skills which had given Riverside an important competitive advantage in the initial competition.

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On December 28, 1988, the SDIO issued Task Order No. 39 and requested each of the three contractors to prepare proposals. Included in the specifications for Task Order No. 39 was a statement that the contractor who was awarded that task would be required to subcontract with ARDAK for that firm's services. On January 13, 1989, and again on February 2 or 3, Riverside allegedly contacted the contracting activity orally to "remind" it that ARDAK was Riverside's subcontractor, and that it would be improper, therefore, to name ARDAK as a directed subcontractor for Task Order No. 39 without also awarding Riverside that task order. Riverside then submitted a proposal on the January 17 due date.

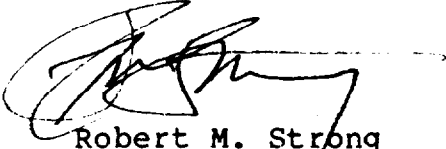
Riverside states that when on February 7, it was "unofficially" notified that Task Order No. 39 would be awarded to BDM, it addressed a letter to the Deputy Director of the SDIO to complain about the redirection of its subcontractor to its competitors, and that on the following day it met with the Deputy Director to "discuss the situation" and was told it would be "looked into." On March 13, Riverside received written notification of the award to BDM. Riverside then filed its written protest in our Office on March 17, in the absence of a response by the SDIO to its complaints, arguing that the solicitation for Task Order No. 39 was improper because the direction to the winning contractor to use ARDAK in effect had "confiscated" a resource important to the protester.

The record indicates that although the solicitation's directed use of ARDAK as a subcontractor was immediately apparent to Riverside, and seen by it as objectionable, Riverside expressed that objection informally and, at first, only orally, perhaps because as task order contractor to the SDIO having a continuing relationship with the contracting agency it wished to work out its differences short of filing a formal protest. The fact remains, however, that under applicable provisions of both our own Bid Protest Regulations and of the Federal Acquisition Regulation (FAR) § 33.107, in order to be effective, a protest must be made in writing and timely filed. McCracken Realty--Request for Reconsideration, B-232015.2, Sept. 1, 1988, 88-2 CPD ¶ 204; Environmental Instruments, Inc., B-231692, July 14, 1988, 88-2 CPD ¶ 52.

Riverside's allegation that the direction of ARDAK as a subcontractor was improper is a protest based on an alleged solicitation impropriety. Our Bid Protest Regulations provide that a protest based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of proposals must be filed prior to closing.

4 C.F.R. § 21.2(a)(1) (1988). There is no indication that Riverside filed a written protest either with the SDIO or with our Office prior to the January 17 due date for receipt of proposals. It is apparent that Riverside was well aware of the requirement in the task order solicitation that ARDAK be used, but instead of formally protesting to the contracting activity or to our Office prior to when proposals were due, it waited until it received notice that it would not receive the award to protest.

The protest is dismissed.



Robert M. Strong
Associate General Counsel